

1 Afternoon Session

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3 (3:30 p.m.)

4 THE COURT: I want to begin by saying to
5 all the attorneys what an excellent job everyone has
6 done throughout this matter, in briefs, even more the
7 arguments today have been excellent on both sides. And
8 now I don't even -- I'm not even going to try, as I
9 told you this morning, with a written opinion to match
10 those briefs that I've gotten.

11 So this is going to be a very short
12 ruling here and you all can do what you want with it.

13 I don't want any displays in the
14 courtroom.

15 In so far as Count 6 and the final count
16 of the plaintiffs' complaint is concerned, the Court
17 does not believe that the plaintiffs have carried the
18 burden adequately so as to decide the due process issue
19 at this point in time; therefore, we dismiss the count
20 in favor of the defendants.

21 As to Counts 3, 4 and 5, while the
22 plaintiffs have made compelling arguments as to the
23 merits, the Court is of the opinion that these counts
24 are not ripe for litigation at this time.

25 The Court recognizes the power of the

1 General Assembly to join, bundle, and put cases in the
2 same project.

3 In this particular case, without reaching
4 an opinion on the validity of it, the Court is of the
5 opinion that the bundling of the Downtown Tunnel with
6 the Midtown Tunnel and the Martin Luther King Freeway
7 Extension was a bundling solely to produce revenue.

8 The General Assembly has exceeded its
9 power by ceding the setting of toll rates and taxes in
10 violation of Article 4, Section 14, of the Constitution
11 of Virginia.

12 I believe this is distinguished from the
13 examples set forth by the Defendant because in this
14 latest -- in this particular legislative action, the
15 General Assembly has given unfettered power to the
16 Department of Transportation to set toll rates without
17 any real or meaningful parameters.

18 Mr. McSweeney, I suppose you prevailed on
19 the main count. Will you draw the order and circulate
20 it?

21 MR. MCSWEENEY: I will circulate it
22 tomorrow, Your Honor.

23 THE COURT: I'm sure you want to note
24 your appeals, so your appeals.

25 MR. THOMAS: Your Honor, at the time the

1 order is entered, we would also move to stay the
2 Court's order pending the appeals being actually filed.

3 THE COURT: Sure, I guess you can do
4 that.

5 MR. THOMAS: All right.

6 THE COURT: Anything else?

7 MR. McSWEENEY: Yes, Your Honor.

8 Count 2.

9 THE COURT: Count 2 and Count 1 I merged.
10 I'm sorry.

11 MR. McSWEENEY: Very good.

12 THE COURT: I did same thing you all did
13 in argument; I merged 3, 4 and 5 and 1 and 2 for the
14 sake of this decision.

15 MR. McSWEENEY: Appreciate your patience.

16 THE COURT: Any more questions?

17 Excellent job. Have a good day.

18 (Whereupon, the hearing concluded at 3:33
19 PM)

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